IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 515 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAI SOMI NARANBHAI PROPERTY.. - Appellant(s)
Versus
SHAKARBHAI SOMABHAI... - Defendant(s)

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Appearance :
MR MC SHAH for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/07/2006

ORAL JUDGMENT

Present Appeal has been filed by the appellant herein, original-defendant [hereinafter referred to as 'defendant'] challenging the

judgment and decree dated 16th July 1984 passed by the learned Judge, City Civil Court at Ahmedabad in Civil Suit No. 2278 of 1982 in decreeing the said suit by permanently restraining the defendant from collecting persons in the adjacent tenement to that of the plaintiff and from creating nuisance and annoyance by loud noise even under the guise of Bajan-Kirtan.

2. The plaintiff filed Civil Suit No. 2278/1982 in the City Civil Court at Ahmedabad against the defendant for a permanent injunction restraining the defendant from creating nuisance and annoyance by loud utterances. It was averred in the suit by the plaintiff that he is in occupation of a tenement consisting of a room and a common Osary in the house bearing Census No. 1295/A, situated at Moti Vasansheri, Ahmedabad. The said house originally belonged to one Bai Somi Naranbhai and she was residing in the room adjacent to the plaintiff's tenement. The

plaintiff's room as well as Bai Somi's room abuts and was having a common Osari. The said Bai Somi expired in 1981 and she bequeathed her property to the appellant Trust. Bai Somi had filed H.R. Suit No. 2408 of 1956 against the plaintiff to recover possession of the tenement occupied by him but she did not succeed therein. In the year 1977, the plaintiff filed Suit No. 5274 of 1977 against Bai Somi restraining her from making any construction in front portion of the tenement occupied by the plaintiff. The said suit was decreed and therefore Bai Somi preferred First Appeal No. 11 of 1981 and during the pendency of the said appeal the said Bai Somi expired and bequeathed the suit house in favour of the trust of which the defendant is a managing trustee. It was further averred that defendant anyhow wanted to recover possession of the rented tenement occupied by the plaintiff and therefore the defendant started harassment to the plaintiff so that the plaintiff may get tired of the

harassment and may vacate the premises. As averred in the Plaint, the defendant initially collected 20 to 22 persons in the adjacent room and these persons started creating unbearable noise by loud utterances from 9-00 PM to 12-00 Midnight. It was further averred in the plaint that on account of loud noise created by these persons it was impossible to live peacefully and comfortably in the rented tenement occupied by the plaintiff. According to the plaintiff, the defendant collected these persons under the guise of Bhajan but the real intention of these persons and the defendant was to harass the plaintiff and his family members so that the plaintiff may vacate the tenement. Vide Exh. 14, the plaintiff came forward with a version that after the institution of the suit the defendant started collecting persons right from the morning at 7.00 AM and these persons started creating loud voice by loud utterances by 11.00 PM and therefore it was impossible for him and his family members to

live peacefully and therefore the aforesaid Suit came to be filed for the aforesaid relief.

3. The defendant filed Written Statement at Exh. 13 initially and thereafter additional Written Statement was filed at Exh. 19 and the Suit was resisted by the defendant. The allegation of creating nuisance and annoyance was denied and it was submitted that there was only Bajan Kirtan as desired by Bai Somi. The learned Trial Judge raised the Issues at Exh. 6 initially which were subsequently amended by Exh. 31. The plaintiff examined himself at Exh. 21, one another witness at Exh. 22. Defendant examined himself at Exh.24, one Hasumatiben at Exh. 25, and Ghanshyambhai at Exh. 27. On appreciation of evidence, the learned Trial Judge held that the plaintiff has proved that the defendant initially assembled persons in the room which was in occupation of Bai Somi and collectively started Bajan-Kirtan by loud voice by 9.00 PM to

midnight. The learned Trial Judge also held that the Tribunal has proved that because of Bajan Kirtan which created loud noise it caused nuisance and annoyance and that the plaintiff was entitled to decree with permanent injunction as prayed for.

4. Being aggrieved and dissatisfied with the same, the defendant has preferred the present Appeal. Shri M.C. Shah, learned advocate appearing on behalf of the appellant original-defendant has submitted that the learned trial Judge has materially erred in holding that by Bajan Kirtan in the adjacent room it created nuisance and annoyance to the plaintiff. It is further submitted by him that at least on festivals the defendant be directed to have Bajan Kirtans in the suit premises. It is required to be noted that on appreciation of evidence and more particularly considering the oral evidence the learned trial Judge has held that by Bajan

Kirtan right from morning till 11.00 PM it created nuisance and annoyance to the plaintiff. The learned Trial Judge has also rightly considered that even if the nuisance is created by religious worship nuisance is nuisance. Under the circumstances, the learned trial Judge has rightly decreed the Suit and restrained the defendants from reciting Bajan-Kirtan which created nuisance and annoyance. On going through the entire evidence and the judgment and decree, this Court is in complete agreement with the reasoning and finding of the learned trial Judge. The contention on behalf of the appellant, that they may be permitted to have Bajan-Kirtan on festivals, also cannot be granted as recital of Bajan-Kirtan creates nuisance and annoyance to the defendant on festive occasions also. Therefore the submission on behalf of the appellant to have Bajan-Kirtan on the festivals also cannot be accepted.

5. For the reasons stated above, the appeal is required to be dismissed and it is dismissed. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

RMR.